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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RAHINAH IBRAHIM, an individual,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

CASE NO. C 06 0545 WHA

**PLAINTIFF, RAHINAH IBRAHIM'S,
OPPOSITION TO MOTIONS TO
DISMISS OF UNITED DEFENDANTS,
JOHN BONDANELLA, AND FEDERAL
DEFENDANTS**

Date: June 29, 2006

Time: 8:00 a.m.

Crtrm: 9 – 19th Floor

The Hon. William Alsup

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INTRODUCTION

On January 2, 2005, plaintiff, Rahinah Ibrahim ("Ibrahim"), was hand-cuffed and arrested at San Francisco International Airport ("SFO"), before her young daughter, her friend, and the entire airport, and later detained at a police station, for no apparent reason, through a collective effort of the defendants named in her complaint. (Complaint, ¶¶ 40-46.) Ibrahim's name, apparently, may have appeared on the "No-Fly List," a list derived from the government watch lists, kept by the Terrorist Screening Center ("TSC"). A person identified on the "No-Fly List", however, is simply to be prohibited from flying. Ibrahim was not only prohibited from flying, but was arrested and detained for hours.

Ibrahim filed this action, naming a variety of state, corporate and federal defendants, all of whom collectively contributed to her false arrest and imprisonment. Now, the United defendants, defendant, John Bondanella ("Bondanella"), and the federal defendants, move to dismiss Ibrahim's claims, based on factual declarations, which Ibrahim has had no opportunity to evaluate through discovery, and based on Security Directives, filed with this Court, which Ibrahim has not been allowed to see.

Courts recognize that motions to dismiss in civil rights cases should be "scrutinized with special care." *Lillard v. Shelby County Board of Ed.* (6th Cir. 1996) 76 F.3d 716, 724; and *Johnson v. State of Calif.* (9th Cir. 2000) 207 F.3d 650, 653. As will be set forth in detail below, defendants' claims are meritless. This Court clearly has both personal and subject matter jurisdiction to hear Ibrahim's claims, especially as they relate to Ibrahim's apparent placement on a government watch list, maintained by the TSC, not the Transportation Security Administration, without notice, and without any opportunity for relief, and as they relate to Ibrahim's public arrest without probable cause. Moreover, Ibrahim has properly asserted various state law claims for relief and claims under 42 U.S.C. section 1983. For those reasons and for the reasons set forth herein, Ibrahim requests that this Court deny defendants' motions to dismiss.

STATEMENT OF FACTS

In her complaint, Ibrahim alleges as follows:

I. Plaintiff, Rahinah Ibrahim:

Ibrahim is an individual, who obtained her Doctorate Degree at Stanford University, while in the United States on a student visa, and currently resides in the country of Malaysia. (Complaint, ¶4.) Ibrahim has no criminal record and no ties whatsoever to any terrorist related activities. (Complaint, ¶38) She is a Muslim woman who is clearly identifiable as Muslim as she wears a head scarf, also known as a “hijab.” *Ibid.* At the time of the incident, Ibrahim was a student at Stanford University, studying to obtain her Doctorate Degree (PhD), and lawfully in the United States on a student visa. *Ibid.* Ibrahim’s student visa was valid from September 26, 2001 to January 11, 2007. *Ibid.* She was preparing her thesis on affordable housing and on January 2, 2005, Ibrahim was scheduled to fly on a United Airlines flight to Kuala Lumpur, Malaysia, with a changing flight in Hawaii, to present her research findings at a conference sponsored by Stanford University. *Ibid.* She was scheduled to return to Stanford in March, 2005, to submit her dissertation and complete her PhD. *Ibid.*

Prior to her trip, in October, 2004, Ibrahim had a hysterectomy surgery at Stanford University Medical Hospital, with an extremely invasive abdominal approach. (Complaint, ¶39.) Ibrahim suffered severe complications from her surgery which extended her recovery period for months. *Ibid.* Ibrahim also suffered back and abdominal pain from her surgery and was regularly taking medication for these complications. *Ibid.*

On January 2, 2005, Ibrahim was hand-cuffed and arrested at San Francisco International Airport (“SFO”), before her young daughter, her friend, and the entire airport, and later detained at a police station, for no apparent reason, through a collective effort of the defendants named in her complaint.

II. The United Defendants:

Ibrahim named David Nevins (“Nevins”), United Airlines (“United”), and UAL Corporation (“UAL”), as defendants in this action (collectively “the United defendants.”)

1 Nevins is an employee of United, and the Customer Service Supervisor at the United ticket
2 counter at SFO. (Complaint, ¶25.)¹

3 **III. The Federal Defendants:**

4 Ibrahim also named the Department of Homeland Security (“DHS”), the Transportation
5 Security Administration (“TSA”), the Terrorist Screening Center (“TSC”), the Federal Aviation
6 Administration (“FAA”), the Federal Bureau of Investigation (“FBI”), and the directors or
7 administrators of those departments (collectively “the federal defendants.”)

8 **A. The DHS, FAA and FBI:**

9 The DHS is an executive department of the United States, whose mission, in part, is to
10 “prevent terrorist attacks within the United States” and to “carry out all functions of entities
11 transferred to the Department.” (6 U.S.C. §111.) The FAA is an administration within the
12 Department of Transportation, an executive department of the United States. (49 U.S.C. § 106;
13 and 5 U.S.C. § 101.) The head of the Department of Transportation is the Secretary of
14 Transportation, who is appointed by the President, with the advice and consent of the Senate. 49
15 U.S.C.A. § 102(b). Finally, the FBI is “in the Department of Justice”, also an executive
16 department of the United States. (28 U.S.C. § 531; and 5 U.S.C. § 101.)

17 **B. The TSA:**

18 The TSA was created shortly after September 11, 2001, as an administration of the
19 Department of Transportation. (49 U.S.C. § 114(a).) (Complaint, ¶ 33.) At that time, the Under
20 Secretary of Transportation for Security was the head of the TSA. (49 U.S.C. § 114(b)(1).) In
21 2002, Congress enacted the Homeland Security Act of 2002, transferring the TSA to the DHS,
22 “including the functions of the Secretary of Transportation, and of the Under Secretary of
23 Transportation for Security” as they relate to the TSA. (6 U.S.C. § 203(2).) According to the
24 declaration of Joseph Salvator, submitted by the federal defendants in support of their motion to
25 dismiss (“Salvator Decl.”), the head of the TSA is now the “Administrator of TSA” or the
26 “Assistant Secretary of Homeland Security for TSA,” formerly, defendant, David Stone, and
27 currently, defendant, Kip Hawley. (Salvator Decl., ¶ 3.)

28 ¹ UAL is the holding corporation for United. (Complaint, ¶23.)

1 The TSA is responsible for, among other things, “day-to-day Federal security screening
 2 operations for passenger air transportation and intrastate air transportation...” (49 U.S.C. §
 3 114(e)(1).) In carrying out this function, the TSA issues security directives to commercial
 4 airlines in the United States, customs and immigration agents, airport security, and law
 5 enforcement agencies. (Complaint, ¶ 35.) Attached to the security directives are two
 6 government watch lists, the “No-Fly List” and the “Selectee List.” *Ibid.* The “No-Fly List”
 7 contains names of people which airlines are prohibited from transporting. (Complaint, ¶ 33.)
 8 The “Selectee” list contains names of passengers who must go through additional security
 9 screening before boarding an aircraft. *Ibid.* (See also Salvator Decl., ¶ 7.)

10 Finally, the only available administrative remedy with the TSA, for an individual whose
 11 name may be on either list is to file a “Passenger Identity Verification Form” with the TSA.
 12 (RFJN, Exh. Q.) The TSA’s website provides, however, that this process “will not remove a
 13 name from the Watch Lists. Instead this process distinguishes passengers from persons who are
 14 in fact on the Watch Lists by placing their names and identifying information in a cleared portion
 15 of the Lists.” (RFJN, Exh. Q.) The TSA does not provide for any process for removing a name
 16 from any “watch lists.”

17 C. The TSC:

18 The TSC was created by Presidential Directive 6 (“HSPD 6”). On information and
 19 belief, Ibrahim alleges that the TSC is an agency of the United States Government, whose
 20 mission is “to maintain a list of ‘Terrorist Identities Information’ for agencies of the United
 21 States Government, including the TSA.” (Complaint, ¶11.) The TSC determines who is on the
 22 list that the TSA uses to compile the “No-Fly List.” *Ibid.* In the Salvatore declaration, the
 23 federal defendants set forth the following regarding the TSC:

24 The No Fly List and Selectee List are maintained at the Terrorist Screening Center
 25 (“TSC”), which was created by the Attorney General in response to the Homeland
 26 Security Presidential Directive (“HSPD-6), dated September 16, 2003. TSC is a multi-
 27 agency organization, **which is funded and administratively managed by the Federal**
 28 **Bureau of Investigation (“FBI”),** and is charged with consolidating the federal
 government’s approach to terrorist screening and providing for the appropriate and lawful
 use of terrorist information in screening processes. **To accomplish this purpose, TSC**
maintains the Terrorist Screening Database (“TSDB”), the consolidated federal

1 government database of known and suspected terrorists. TSC exports data from
 2 the TSDB to other screening agency databases, including the No Fly and Selectee
 Lists.

3 (Salvator Decl., ¶9.) (Emphasis added.) In other words, the TSC is not part of the DHS
 4 or the TSA. Rather, it is “funded” and “managed” by the FBI. Moreover, although the TSA
 5 issues the “No-Fly” and “Selectee” Lists as part of its security directives, the TSC is the
 6 organization that gathers and maintains the consolidated terrorist watch list, from which the No-
 7 Fly and Selectee Lists are derived. (See also the Report on Effects on Privacy and Civil
 8 Liberties, dated April 27, 2006, where the DHS states that “[o]riginally created and maintained
 9 by the Transportation Security Administration (TSA), No-Fly and Selectee lists are now derived
 10 from the consolidated terrorist watch list maintained by the Terrorist Screening Center (TSC).”)
 11 (RFJN, Exh. G, pg. i.)

12 **IV. Defendant, John Bondanella:**

13 Ibrahim named John Bondanella (“Bondanella”), as a defendant in this action.²
 14 According to his declaration, on January 2, 2005, Mr. Bondanella worked as a watch officer,
 15 through his employer, US Investigations Services, Inc. (“USIS”), for the Transportation Security
 16 Operations Center (“TSOC.”) (See Declaration of John Bondanella In Support Of Motion To
 17 Dismiss, filed May 22, 2006 (“Bondanella Decl.”), ¶4.)

18 Apparently, the TSA disburses “Federal Security Directors” (“FSDs”) to all of the
 19 commercial airlines in the US, to lead and coordinate security activities at the respective airlines.
 20 (RFJN, Exh. I, pgs. 7-8.) The TSOC and in this case, Bondanella, is the “point of contact” for
 21 FSD’s to seek guidance on handling “security-related operations.” *Ibid.*

22 **V. The Events Of January 2, 2005:**

23 On January 2, 2005, Ibrahim, with her daughter, went to the ticket counter to obtain their
 24 boarding passes and check in their bags. (Complaint, ¶40.) Ibrahim informed United of her
 25 medical complications and requested wheelchair transportation to the airline gate. *Ibid.* At that

26
 27 ² Ibrahim also named SFO, the City and County of San Francisco, the San Francisco Police Department, Police
 28 Sergeant, Richard Pate, and police officers James Cunningham and Elizabeth Maron (collectively “the San
 Francisco defendants.”) The San Francisco defendants have answered plaintiff’s complaint.

1 time, defendant, Nevins, approached Ibrahim and asked to see her tickets. *Id.* at ¶41. On
 2 information and belief, Nevins called the San Francisco Police Department and informed them
 3 that Ibrahim was on the “No-Fly List.”³ *Ibid.* At the request of Nevins, defendants, police
 4 sergeant, Richard Pate (“Pate”), and police officer, James Cunningham (“Cunningham”), of the
 5 San Francisco Police Department (“SFPD”), arrived at the airport. *Ibid.* On information and
 6 belief, Pate checked the “No-Fly List” for Ibrahim’s name and called defendant, Bondanella.
 7 Bondanella told Pate to not allow IBRAHIM on the flight, to contact the FBI, and to detain her
 8 for questioning. *Ibid.* Meanwhile, Ibrahim stood waiting for an hour and a half, with no
 9 wheelchair, while she suffered from back and abdominal pain, even though SFPD officers were
 10 informed of Ibrahim’s condition. *Id.* at ¶42.

11 At 8:45 a.m., fifteen minutes before Ibrahim’s flight was scheduled to leave, defendant,
 12 Cunningham, told Ibrahim that she was being arrested. *Id.* at ¶43. Ibrahim was handcuffed by
 13 Cunningham, with her hands placed behind her back, in the middle of the airport, in front of her
 14 fourteen-year old daughter, and everyone else at SFO. *Ibid.* Ibrahim was not informed as to why
 15 she was being arrested. Instead, she was taken to the SFPD police station. *Ibid.*

16 Upon arriving at the police station, Ibrahim was searched by defendant, police officer,
 17 Elizabeth Maron (“Maron”). *Id.* at ¶44. During this search, Maron attempted to remove
 18 Ibrahim’s hijab and searched under her hijab in public view, before the other male officers. *Ibid.*
 19 On information and belief, an FBI agent, Paul Wood, was notified of the arrest, and a TSA
 20 officer, Lee Korman, arrived on the scene. (RFJN, Exh. A.)

21 Ibrahim was placed in a holding cell at the SFPD police station for approximately two
 22 hours while she continued to suffer from severe back and abdominal pain. *Id.* at ¶45. Ibrahim
 23 was not given her medication when she asked for it to relieve her pain. *Ibid.* Eventually, the
 24 paramedics were called as a result of Ibrahim’s medical condition, where she was finally given
 25 her medication after the paramedics left. *Ibid.* The FBI finally requested SFPD to release
 26

27 ³ It is not clear to plaintiff to date whether she actually is on the No-Fly list. The police report prepared by the San
 28 Francisco defendants states that she is on the No-Fly list, however, the Federal Defendants have refused to disclose
 that information.

1 Ibrahim at approximately 11:15 a.m., over two hours after her flight had left. Ibrahim was given
2 no information as to why her name was on the “No-Fly List.” *Id.* at ¶46.

3 Defendants represented to Ibrahim that her name had been removed from
4 the “No-Fly List.” *Id.* at ¶47. The following day, on January 3, 2006, Ibrahim discovered that
5 she was still on the “No-Fly List” when she attempted to fly again. *Ibid.* After some effort,
6 Ibrahim was finally allowed to fly to Kuala Lumpur, Malaysia. *Ibid.* At SFO, however, and at
7 every stop over, Ibrahim was publicly subjected to enhanced searches before boarding any
8 flights. *Ibid.*

9 On March 24, 2005, Ibrahim submitted a request for Passenger Identity Verification to
10 the TSA, the only procedure available with the TSA, in an attempt to clear her name if the issue
11 is simply a matter of misidentification. (RFJN, Exh. B.) A response was not issued to Ms.
12 Ibrahim’s request until approximately one year later, in March, 2006, after this action was filed.
13 (RFJN, Exh. O.) The response essentially amounts to no response at all as it simply states the
14 following:

15 [W]e have conducted a review of any applicable records in consultation with other
16 federal agencies, as appropriate. Where it has been determined that a correction to
17 records is warranted, these records have been modified to address any delay or denial of
boarding that you may have experienced as a result of the watch list screening process.

18 Essentially, the response does not clarify Ibrahim’s “No-Fly List” status. It simply states
19 that “if” a correction to their records was warranted, such correction has been made. It does not
20 state that a correction was, in fact, warranted, or that her name really is on the list.

21 In fact, on April 14, 2005, Ibrahim’s Visa was revoked by letter from the United States
22 Embassy in Malaysia. (See Federal Defendants’ Motion to Dismiss, Exh. 1.) The letter cites to
23 Section 212(a)(3)(B) of the Immigration and Nationality Act as the basis for the revocation of
24 her Visa. That section provides, in part, that any “alien” who “a consular officer, the Attorney
25 General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is
26 engaged in or is likely to engage after entry in any terrorist activity” is “inadmissible.” 8 U.S.C.
27 § 1182(a)(3)(b).
28

LEGAL ARGUMENT

I. Ibrahim Need Only State “a Short And Plain Statement” Of Her Claims.

In their motions to dismiss, the United defendants, the Federal defendants and Bondanella, all argue that Ibrahim has not set forth sufficient facts to: a) show that this Court has jurisdiction; b) show that she has standing to bring these claims; and c) support her claims for relief. Rule 8(a) of the Federal Rules of Civil Procedure, however, provides that a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” The federal rules provide for “notice pleading” which means that one’s pleadings need only give “fair notice” of the pleader’s claim or defense so that opposing parties can respond, conduct discovery and prepare for trial. *Conley v. Gibson*, 255 U.S. 41, 47-48 (1957). “The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). Detailed evidentiary facts need not be set forth in the complaint: “[F]ederal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims...” *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 US 163, 168-169 (1993).

“Federal pleading requirements are extremely liberal. The rules are designed specifically to minimize disputes over pleading technicalities.” (Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 2006), Sec. 8:24.) Moreover, “conclusory allegations are perfectly proper in federal actions.” *Id.* at 8:27. In fact, “[a] complaint is not required to allege all, or any, of the facts entailed by the claim.” *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998). (See also *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1115 (DC Cir. 2000).) Additionally, “It is not always necessary to specify the precise nature of the claim asserted as long as the *facts* alleged put defendant on notice thereof.” Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 2006), Sec. 8:28.2; citing *Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462, 466 (9th Cir. 1990). Finally, courts recognize that motions to dismiss in civil rights cases should be “scrutinized with special care.” *Lillard v. Shelby County Board of Ed.*, 76 F.3d 716,

724 (6th Cir. 1996). (See also *Johnson v. State of Calif.*, 207 F.3d 650, 653 (9th Cir. 2000) - liberal construction rule particularly important in civil rights cases.)

As will be set forth in detail below, Ibrahim's complaint sets forth sufficient facts to put defendants on notice of the nature of her claims, her standing to bring such claims, and this Court's jurisdiction to hear said claims. For those reasons and for the reasons set forth herein, Ibrahim requests that this Court deny defendants' respective motions to dismiss.

II. 49 USC § 46110 does not divest this Court of Jurisdiction To Hear Ibrahim's Claims.

Defendants mistakenly cite 49 U.S.C. § 46110(a) for the proposition that this Court is without jurisdiction to hear Ibrahim's claims. 49 U.S.C. § 46110(a) provides that a litigant disclosing "a substantial interest in an order issued by the Secretary of Transportation... or the Under Secretary of Transportation for Security...or the Administrator of the Federal Aviation Administration" can apply for review of said order by filing a petition for review before an appropriate U. S. Court of Appeals. (49 U.S.C § 46110(a).) (Hereinafter "section 46110.") Ibrahim's claims do not fall within this section. First, even if her placement on the "No-Fly List" was carried out by the TSA, the TSA is not referenced in this code section, is no longer part of the Department of Transportation, and is no longer headed by the Under Secretary of Transportation for Security. As such, this section should not apply to the TSA.

Moreover, even if this Court determines that this section applies to "orders" of the TSA, Ibrahim should still be allowed to challenge her apparent placement on a government watch list, which is not part of any "order" of the TSA, but from which the TSA issues its security directives. Ibrahim's apparent placement on a government watch list was carried out by the TSC, as acknowledged by the federal defendants, an agency that is not part of the Department of Transportation or the FAA, but rather, an agency managed by the FBI, within the US Department of Justice. Additionally, case law makes clear that this Court retains jurisdiction to review the TSA's "Ombudsman Clearance Procedures," (i.e. the TSA's "clearance procedures" for filing a "Passenger Identity Verification Form") which do not constitute "orders" under section 46110. *Green v. Transportation Security Administration*, 351 F.Supp.2d 1119, 1126 (W.D. Wash. 2005).

1 Finally, since the security directives do not appear to authorize the arrest or detention of an
 2 individual on either list, such conduct falls squarely outside of the scope of any purported
 3 “order” of the TSA and Ibrahim’s claims based on such conduct, remain within this Court’s
 4 jurisdiction.

5 **A. Section 46110 Does Not Apply To Ibrahim’s Claims Because They Do Not**
 6 **Implicate Any “Order” Issued By The Secretary Or Undersecretary Of**
 7 **Transportation.**

8 By its own terms, 49 U.S.C. section 46110(a) only applies to orders issued by either “the
 9 Secretary of Transportation” or “the Under Secretary of Transportation for Security” or the FAA.
 10 49 U.S.C. § 46110(a). As set forth above, the TSA is not part of and is not administered or
 11 directed by any of those entities or individuals. It is true that the TSA was created shortly after
 12 September 11, 2001, as an administration of the Department of Transportation. 49 U.S.C. §
 13 114(a). At that time, the Under Secretary of Transportation for Security was the head of the
 14 TSA. (49 U.S.C. § 114(b)(1).) In 2002, however, Congress enacted the Homeland Security Act
 15 of 2002, transferring the TSA to the DHS. (6 U.S.C. § 203(2).) The Homeland Security Act
 16 provides that “the Transportation Security Administration [i.e., the TSA] shall be maintained as a
 17 distinct entity within the Department [of Homeland Security] under the Under Secretary for
 18 Border Transportation and Security.” 6 U.S.C. § 234(a). The TSA has not been within the
 19 Department of Transportation since March of 2003. (RFJN, Exh. E.) “One year after creating
 20 the TSA, Congress transferred the agency to the Department of Homeland Security, placing it
 21 under that Department’s Under Secretary for Border and Transportation Security.” *Coalition of*
 22 *Airline Pilots Ass’n v. Federal Aviation Administration*, 370 F.3d 1184, 1186 (D.C. Cir. 2004)
 (citing 6 U.S.C. § 234).

23 Ibrahim’s airport detainment and subsequent arrest occurred on January 2, 2005. *See*
 24 Complaint, ¶¶ 40- 46. Thus, the TSA had been within the Department of Homeland Security for
 25 almost two years at the time of Ibrahim’s detainment and arrest.⁴ Consequently, even if the TSA

26 ⁴ This fact distinguishes the instant action from the *Gilmore v. Gonzales* case cited by Defendants. *See, e.g.,*
 27 United’s Motion to Dismiss, 4:14- 6:5; Federal Defendants’ Motion to Dismiss, 8:8- 9:12 citing *Gilmore v.*
 28 *Gonzales*, 435 F.3d 1125 (9th Cir. 2006). *Gilmore*’s airport incident occurred on July 4, 2002, while the TSA was
 located within the Department of Transportation. *See Gilmore*, 435 F.3d at 1142.

1 did issue some type of order pertaining to Ibrahim's detention or arrest, then section 46110
 2 would not preclude Ibrahim's claims because the TSA is not within the Department of
 3 Transportation.

4 Additionally, the federal defendants themselves acknowledge that the head of the TSA is
 5 now the "Administrator of TSA" or the "Assistant Secretary of Homeland Security for TSA,"
 6 formerly, defendant, David Stone, and currently, defendant, Kip Hawley. (Salvator Decl., ¶ 3.)
 7 Therefore, the Under Secretary of Transportation for Security is no longer the head of the TSA
 8 and any "orders" issued by the TSA are not "orders" of the Under Secretary of Transportation for
 9 Security and therefore, are not subject to section 46110.

10 **B. 49 U.S.C. section 46110(a) Does Not Apply To Ibrahim's Claims Because The**
 11 **TSA Did Not Place Ibrahim On Any Security Watchlist.**

12 Neither the Secretary of Transportation, nor the Under Secretary of Transportation, nor
 13 anyone from the TSA decides whether individuals are placed on *any* terrorist screening list. The
 14 federal defendants themselves acknowledge that "it is not TSA but another agency within the
 15 Government that makes the determination that an individual poses or is suspected of posing a
 16 risk to airline safety, and therefore should be placed on a security watchlist, including the No Fly
 17 List." (RFJN, Exh. H.) Thus, even Defendants admit that the TSA does not place names on any
 18 watchlist, including the "No-Fly List."

19 Instead, the TSC is responsible for creating a consolidated watchlist that is used by *every*
 20 governmental agency responsible for terrorist screening.⁵ According to the FBI's website, the
 21 TSC "provides 'one-stop shopping' so that every government screener is using the same terrorist
 22 watchlist— whether it is an *airport screener*, an embassy official issuing visas overseas, or a
 23 state or local law enforcement officer on the street." (RFJN, Exh. D.) The TSA simply checks
 24 the names and dates of birth of passengers on domestic flights against the TSC watchlist. *Id.* The
 25 fact that the TSA has no procedure for removing one's name from the watch lists further
 26 indicates that the TSA does not maintain those lists. Moreover, the federal defendants clearly
 27 acknowledge that "TSC maintains the Terrorist Screening Database ("TSDB"), the consolidated

28 ⁵ As stated above, The TSC was established by Homeland Security Presidential Directive 6. (RFJN, Exh. E.)

1 federal government database of known and suspected terrorists. TSC exports data from the
 2 TSDB to other screening agency databases, including the No Fly and Selectee Lists.” (Salvator
 3 Decl., ¶9.)

4 The TSC— not the TSA— would therefore be the governmental agency responsible for
 5 Ibrahim’s placement on any security watchlist, including the “No-Fly List.” Defendants have
 6 not disputed this. Moreover, any action of the TSC does not fall within section 46110 as the
 7 TSC is clearly *outside* of the Department of Transportation. Instead the TSC is within the
 8 Department of Justice. *See, e.g.*, Homeland Security Presidential Directive 6. “[T]he Attorney
 9 General, the Director of Central Intelligence, and the Secretaries of the Departments of State and
 10 Homeland Security signed a Memorandum of Understanding creating the TSC and placed it
 11 within the Federal Bureau of Investigation, U.S. Department of Justice.” (RFJN, Exh. E.) Again,
 12 this is clearly acknowledged by the federal defendants that the FBI manages the TSC. (Salvator
 13 Decl., ¶9.) Because the TSC is outside of the Department of Transportation, section 46110 has
 14 no effect on any policy or order issued by the TSC. This Court may therefore hear Ibrahim’s
 15 claims relating to her placement on the government’s watch lists because the TSC made the
 16 determination that she should be placed on such lists and in turn, on the “No-Fly List.”

17 Defendants generally cite *Gilmore v. Gonzales*, 435 F.3d 1125 (9th. Cir. 2006), for the
 18 proposition that the “No-Fly List” is an “order” as contemplated within section 46110. However,
 19 defendants fail to point out that the *Gilmore* plaintiff lacked standing to challenge the “No-Fly
 20 List.” *Id.* at 1152. “Gilmore’s alleged injury stems from the identification policy itself, and does
 21 not implicate other security programs that depend upon passenger identification information.” *Id.*
 22 at 1151. Therefore, “Gilmore lacks standing to challenge all components of “the Scheme”
 23 except the identification policy.” *Id.* at 1152. Ultimately, the *Gilmore* Court held that the TSA’s
 24 identification policy— not the No-Fly List— is an “order” within the meaning of section 46110.
 25 *Id.* at 1149.

26 The Washington district court opinion, *Green v. Transportation Security Administration*,
 27 is also not controlling. In that case, plaintiffs did not name the TSC as a defendant in their action
 28 and as such, the Court did not consider whether plaintiffs may challenge the TSC’s placement of

individual names on the government's watch lists. Moreover, *Green* was decided almost nine months before the TSA's recent admission that it does not place individuals on any watchlist. See *Green v. Transportation Security Administration*, 351 F.Supp.2d 1119 (W.D. Wash. 2005) (**January 7, 2005**); (RFJN, Exh. H (**September 27, 2005**)). Put simply, the *Green* court did not have the same facts or the same parties that this Court now has before it.

Even if the *Green* court actually found that the TSA determines which individuals are placed on the No-Fly List, Defendants may not rely on *Green* in support of that proposition. "Factual findings in one case ordinarily are not admissible for their truth in another case through judicial notice." *Wyatt v. Terhune*, 315 F.3d 1108, 1114, fn. 5 (9th. Cir. 2003). Instead, Defendants would actually have to present evidence on this matter. In this case, defendants' own admissions indicate that the policies or orders challenged by Ibrahim were in fact issued by the TSC. Thus, section 46110 does not deprive this Court of jurisdiction to hear Ibrahim's challenge to her placement on a government watch list, maintained by the TSC.

C. Even If Ibrahim's Claims Implicate "Orders" Within The Context Of Section 46110(a), This Court Retains Jurisdiction Because Ibrahim's Claims Constitute "Broad Constitutional Challenges."

Regardless of whether or not Ibrahim's claims implicate "orders" pursuant to 49 U.S.C. section 46110(a), this Court retains jurisdiction because the claims raise broad constitutional challenges. See *Crist v. Leippe*, 138 F.3d 801, 803 (9th. Cir. 1998). District courts may hear broad constitutional challenges that are not "inescapably intertwined" with "orders" issued by the Department of Transportation. *Id.*; see also *Green v. Transportation Security Administration*, 351 F.Supp.2d 1119, 1126 (W.D. Wash. 2005) ("if the claims raise broad constitutional challenges that are not inescapably intertwined with the Security Directives, this Court would have jurisdiction to consider the issues raised notwithstanding the fact that they constitute orders within the meaning of § 46110").

Even if *Green* applies to the instant action, this Court retains jurisdiction because, *inter alia*, the *Green* court explicitly held that the "Ombudsman Clearance Procedures do not constitute "orders" for the purposes of 46110." *Green*, 351 F.Supp.2d at 1128. Like the *Green*

1 plaintiffs, Ibrahim alleges that the government's remedial procedures – namely the Passenger
 2 Identification Verification process - do not provide adequate notice or a meaningful opportunity
 3 for her to clear her name. (Complaint, ¶¶ 49- 62; *Green*, 351 F.Supp.2d at 1128.) Unlike the
 4 *Green* plaintiffs, Ibrahim was arrested, incarcerated for almost two and a half hours, missed her
 5 flight, and subsequently had her visa revoked. (Complaint ¶¶ 43-46.) In contrast, none of the
 6 *Green* plaintiffs missed a flight or were subjected to enhanced screening for more than one hour.
 7 *Green*, 351 F.Supp.2d at 1123.

8 The *Green* court analyzed the government's remedial procedures vis-à-vis the Fifth
 9 Amendment's stigma-plus doctrine. A plaintiff will prevail under the Fifth Amendment's
 10 stigma-plus doctrine by showing: (1) public disclosure of a stigmatizing statement by the
 11 government, the accuracy of which is contested; plus (2) the denial of some more tangible
 12 interest such as employment, or the alternation of a right or status recognized by state law.
 13 *Green*, 351 F.Supp.2d at 1129, citing *Ulrich v. City & County of San Francisco*, 308 F.3d 968,
 14 982 (9th. Cir. 1982). The *Green* court held that being publicly associated with the No-Fly List
 15 satisfies the "stigma" prong of the stigma-plus doctrine. *Green*, 351 F.Supp.2d at 1129.
 16 However, the *Green* plaintiffs failed to satisfy the "plus" prong because they did "not allege that
 17 they [had] suffered impediments different than the general traveling public." *Id.* at 1130.

18 Ibrahim has a claim under the Fifth Amendment's stigma-plus doctrine. Like the *Green*
 19 plaintiffs, Ibrahim clearly satisfies the "stigma" prong because she has been publicly associated
 20 with the No-Fly List. Unlike the *Green* plaintiffs, Ibrahim will also satisfy the "plus" prong
 21 because she was incarcerated, she missed her flight, and her visa was revoked. Although
 22 Ibrahim alleges that her arrest also constitutes a constitutional violation, it is not necessary that
 23 the "plus" factor rise to the level of a constitutional violation. Indeed, if that were the standard,
 24 there would be no need to show the "stigma" element because a plaintiff could state a claim
 25 using the "plus" factor alone.

26 Moreover, the *Green* court suggested that a wide variety of No-Fly List constitutional
 27 challenges would be appropriate. Specifically, *Green* left open the possibility of a No-Fly List
 28

1 plaintiff seeking "broad equitable relief", including the adoption of the Security Directives or the
 2 procedures followed before they were implemented. *Green, supra*, 351 F.Supp.2d at 1126-1127.

3 Thus, even if *Green* applies, Ibrahim's claims survive under the Fifth Amendment's
 4 stigma-plus doctrine and to challenge the TSA's clearance procedure.

5 **D. This Court Retains Jurisdiction Over Ibrahim's Claims To The Extent That**
 6 **Ibrahim's Incarceration and Visa Revocation Do Not Implicate Any "Order"**
 7 **Within The Context Of 49 U.S.C. section 46110(a).**

8 Defendants provide no evidence to suggest that Ibrahim's incarceration and/or visa
 9 revocation were authorized by the TSA's security directives, or any other *alleged* "order" as
 10 contemplated within section 46110. The Federal Defendants describe the security directives as
 11 follows:

12 "TSA has implemented these requirements by issuing a series of Security
 13 Directives to regulated aircraft operators and Emergency Amendments to foreign
 14 air carriers, which I refer to collectively below as Security Directives. These
 15 Security Directives direct air carriers to implement specific security procedures
 16 and to take specific security measures with respect to individuals who are
 17 identified on one of two TSA watch lists: the "No Fly List" and the "Selectee
 18 List." **Individuals on the No Fly List are prohibited from flying altogether.**
 19 Individuals on the Selectee List must undergo additional security screening prior
 20 to boarding an aircraft."

21 (Salvator Decl., ¶7.) (Emphasis added.) In other words, none of the defendants have shown that
 22 there is anything in the security directives that authorizes the making of any arrests by virtue of
 23 being on the list. Based on the limited information which has been disclosed regarding the
 24 TSA's security directives, they only appear to provide that individuals on the No Fly List are
 25 prohibited from flying and individuals on the Selectee List are to undergo additional screening.
 26 Ibrahim's arrest, therefore, was squarely outside the scope of the security directives. This issue
 27 was not addressed in *Green* as in that case, individuals named on the No-Fly List were neither
 28 incarcerated nor did they miss their flights. *Green*, 351 F.Supp.2d at 1123. Thus, even if section
 46110 deprived this Court of jurisdiction with respect to defendants' placement of Ibrahim on the
 No-Fly List and with respect to excluding Ibrahim from her flight, this Court may still entertain
 Ibrahim's damages and equitable claims as they relate to her arrest and incarceration.

III. This Court Has Subject Matter Jurisdiction To Hear Ibrahim’s State Law Claims Against The Federal Defendants.

The federal defendants are subject to jurisdiction before this Court with respect to Ibrahim’s state law claims. In fact, the federal defendants must account for their California torts based upon supplemental jurisdiction and the unavailability of sovereign immunity. Supplemental jurisdiction is proper where the relationship between the federal and state claims is such that they “form part of the same cause or controversy.” 18 U.S.C. § 1367(a). The federal and state claims will satisfy 18 U.S.C. section 1367(a) when they arise from a “common nucleus of operative facts” such that a plaintiff “would ordinarily be expected to try them all in a single judicial proceeding. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

Ibrahim’s federal and state claims both arise from the same “nucleus of operative facts.” In fact, Ibrahim’s federal and state claims both arise from her arrest, her incarceration, her exclusion from her flight, and her placement on a terrorist screening list. *See, e.g., Complaint ¶¶ 49, 55, 63, 70, 77, 84, 91, 98, 106, 112, 116, 121* (state and federal claims reallege and incorporate the *same* facts). Therefore, this Court has jurisdiction over the federal defendants with respect to Ibrahim’s state law claims by virtue of this Court’s “federal question” jurisdiction over Ibrahim’s related federal claims.

Moreover, the federal defendants must account for their California torts before this Court because sovereign immunity is unavailable. By statute, the federal defendants may be held liable when a federal law enforcement officer commits, *inter alia*, false imprisonment. 28 U.S.C. § 2680(h).⁶ In light of this statutory exception to the sovereign immunity doctrine, the federal defendants are subject to jurisdiction before this Court with respect to Ibrahim’s state law claims.

IV. Plaintiff, Ibrahim, Has Article III Standing To Bring Her Claim

To establish Article III standing, Ibrahim must show “(1) she has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it

⁶ Ibrahim has recently filed federal tort claims against all of the federal agency defendants. (RFJN, Exs. J-N.) Ibrahim’s claims are timely as they need only be made within two years of the date of the incident. (28 U.S.C. §2675(a).)

1 is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
 2 decision.” *Wilbur v. Locke*, 423 F.3d 1101, 1107 (9th Cir. 2005); *see also International Broth. of*
 3 *Teamsters v. Transportation Sec. Admin.*, 429 F.3d 1130, 1133 (D.C. Cir. 2005) (Plaintiff must
 4 show “three elements: (1) injury-in-fact, (2) causation, and (3) redressability.”). Ibrahim meets
 5 each criterion.

6 Moreover, Ibrahim’s burden of establishing her standing on a motion to dismiss is readily
 7 established. In the pleadings, “general factual allegations of injury resulting from the defendant’s
 8 conduct may suffice.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). On a motion to
 9 dismiss, the Court must “presume that the general allegations embrace those specific facts that
 10 are necessary to support the claim.” *Id.* Indeed, *Lujan* – the only case the Federal Defendants cite
 11 for the proposition that Ibrahim lacks standing – **supports** Ibrahim’s right to redress in this Court.
 12 As the Supreme Court held:

13 When the suit is one challenging the legality of government action ..., the nature and
 14 extent of facts that must be averred (at the summary judgment stage) or proved (at the
 15 trial stage) in order to establish standing depends considerably upon whether the ***plaintiff***
 16 ***is himself an object of the action*** ... at issue. ***If he is, there is ordinarily little question***
 17 ***that the action ... has caused injury, and that a judgment preventing ... the action will***
 18 ***redress it.***

19 *Id.* at 5661-62 (emphasis added).

20 The problem in *Lujan* was that the case involved the “allegedly unlawful regulation ... of
 21 *someone else....*” *Id.* at 562 (emphasis in original). But here, the federal defendants took action
 22 directly against Ibrahim that caused her harm. This Court has all the Article III power it needs to
 23 redress her injuries.

24 The federal defendants argue that because Ibrahim has not established that she holds a
 25 Visa to enter this country, the Court is powerless to redress the harm they have caused her. But
 26 Ibrahim “need not demonstrate that there is a ‘guarantee’ that [her] injuries will be redressed by a
 27 favorable decision.... [P]laintiffs ‘must show only that a favorable decision is *likely* to redress
 28 [their injuries], not that a favorable decision *will inevitably* redress [their injuries].’ *Wilbur v.*
Locke, 423 F.3d 1101, 1108 (9th Cir. 2005) (emphasis original); *Graham v. Federal Emergency*

1 *Management Agency*, 149 F.3d 997, 1003 (9th Cir.1998). Instead, “plaintiffs lack standing
2 primarily when the ... agency is not before the court, or when redressability ‘depends on the
3 unfettered choices made by independent actors not before the courts and whose exercise of broad
4 and legitimate discretion the courts cannot presume either to control or predict.’” *Graham*, 149
5 F.3d at 1003 (citation omitted). The agency that has caused Ibrahim cognizable harm is before
6 this court. To Ibrahim’s knowledge, no government agency, which is not a party to this case
7 controls the “No-Fly” list. The federal defendants have not demonstrated otherwise.

8 As alleged, by placing Ibrahim on the “No-Fly” list and refusing to provide a mechanism
9 to safeguard her Due Process rights, the federal defendants subjected Ibrahim to unnecessary and
10 undeserved arrest, incarceration, stigma, embarrassment, harassment, and delay – all actual
11 injuries directly suffered by Ibrahim. The threat of each of these harms recurring remains
12 unabated to this day, should Ibrahim, a scholar associated with Stanford University, attempt to
13 board a United States airline. Such harm is constitutionally cognizable and distinct from the
14 immigration-related harm caused by the Government’s equally unjust and unexplained denial of
15 Ibrahim’s student visa.

16 The United States Embassy in Malaysia revoked Ibrahim’s student visa on April 14,
17 2005. In a two-paragraph letter, the Consul stated that Ibrahim’s visa was revoked under
18 “Section 212(a)(3)(B) of the Immigration and Nationality Act” and that the “revocation of [her]
19 visa does not necessarily indicate that [she] is ineligible to receive a U.S. visa in future [sic].”
20 Thus, the only reason given Ibrahim for the revocation of her visa was a citation to Section 212,
21 entitled “Terrorist Activities.” That section provides, in part, that any “alien” who “a consular
22 officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable
23 ground to believe, is engaged in or is likely to engage after entry in any terrorist activity” is
24 “inadmissible.” 8 U.S.C § 1182(a)(3)(b).

1 The Kotval Declaration, attached to the Federal Defendants' motion to dismiss, is no
 2 more elucidating.⁷ While Kotval does declare that the decision to revoke Ibrahim's visa was
 3 made "without reference to any 'No Fly' list," he does not explain how or why the decision was
 4 made. He also does not claim that the revocation of Ibrahim's Visa was not made because of her
 5 placement on the government's watch list. Kotval raises a distinction without a difference. The
 6 government cannot render its actions non-reviewable by hiding the wrongful actor in a dark
 7 corner of secret bureaucracy and claiming that one injury it caused vitiates its responsibility for
 8 the others.

9 Ibrahim is not a terrorist and has not supported or aided any terrorist activity, and the
 10 government has produced no evidence showing otherwise. Instead, the government has
 11 subjected her to arrest, humiliation and unexplained visa revocation based on nothing more than
 12 terse vilification. The government's flawed decision to place Ibrahim on a watch list, based
 13 presumably on the happenstance that "Ibrahim" is a name shared by *millions* of Muslims, may
 14 not be rendered non-reviewable because it has caused Ibrahim to suffer multiple distinct harms.
 15 The Federal Defendants' attempt to close the courthouse door by the force of their own
 16 wrongdoing is the very definition of injustice.

17 In any event, the visa revocation does not affect the redressibility of the claims before this
 18 Court. While the lack of a visa impedes Ibrahim's access to the United States, it does not subject
 19 her to the same types of harm – unwarranted arrest, incarceration, stigma, embarrassment,
 20 harassment, and delay – that placing her name on the "No-Fly" list has caused. Each of these
 21 harms would be redressed by a favorable result in these proceedings. Moreover, as the Consul
 22 has stated, the revocation of Ibrahim's visa does not indicate that she is ineligible to receive a
 23 U.S. Visa in the future. Thus, while the revocation of Ibrahim's Visa constitutes an *additional*

24 ⁷ The Court should disregard the Kotval Declaration as improper extrinsic evidence. A "court's role at the 12(b)(6)
 25 stage is not to decide winners and losers or evaluate the strength or weakness of claims. Nor can a court resolve
 26 factual questions at the 12(b)(6) stage. We must accept as true the allegations in the complaint and decide *only*
 27 whether plaintiff has advanced *potentially* viable claims." *Jacobson v. Hughes Aircraft Co.*, 105 F.3d 1288,
 28 1292 (9th Cir.1997) (emphasis original) (citations omitted) (*overruled on other grounds by* 525 U.S. 432); *see also*
Abramson v. Brownstein, 897 F.2d 389, 391 (9th Cir.1990) ("Our review is based on the contents of the complaint.
 We accept the allegations as true and construe them in the light most favorable to the plaintiff. Dismissal is
 improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 would entitle him to relief.") (Citations and internal quotation marks omitted.)

harm, it does not render her wrongful placement on a government watch list non-redressible. Ibrahim's case should be heard, and this Court should provide her the Due Process the federal defendants have so far sought to deny her.

V. This Court Has Personal Jurisdiction Over Defendant, John Bondanella.

Defendant, Bondanella, is subject to personal jurisdiction in California because his wrongful conduct occurred in California, and the effect of this conduct was felt within California. Namely, Bondanella ordered Ibrahim's arrest, and prevented her from boarding an aircraft in California. (Complaint, ¶41.) Thus, Bondanella is subject to personal jurisdiction for "[d]oing an act in the state giving rise to the cause of action being sued upon." *Marra v. Shea*, 321 F.Supp. 1140, 1143, (N.D. Cal. 1971) *citing* California Code of Civil Procedure § 410.10, Judicial Council Comments (Supp. 1971). Even if Bondanella's wrongful conduct were deemed outside of California, Bondanella would still be subject to this Court's jurisdiction under the specific jurisdiction test. *See Gray & Co. v. Firstenberg Machinery Co., Inc.*, 913 F.2d 758, 760 (9th Cir. 1990).⁸

A. Bondanella Is Subject To This Court's Jurisdiction Because His Wrongful Conduct Herein Occurred In California.

If a non-resident defendant engages in wrongful conduct in the forum state, then he is subject to personal jurisdiction in the forum state for claims arising from that conduct. *Hess v. Pawlowski*, 274 U.S. 352 (1927); *Rosenblatt v. American Cyanamid Co.*, 86 S.Ct. 1, 3 (1965); *Marra v. Shea*, 321 F.Supp. 1140, 1143, (N.D. Cal. 1971); *Lundgren v. Sup Ct.*, 111 Cal.App.3d 477, 484 (1980). This is true regardless of whether the defendant's contacts with the forum state were "carried on over a short period or a longer period." *Lundgren*, 111 Cal.App.3d at 484. Moreover, if a defendant engages in wrongful conduct that causes "foreseeable injuries" in the

⁸ "If the nonresident committed the liability-producing acts while physically present in the forum state, this is almost always held a sufficient "contact" to support personal jurisdiction in lawsuits arising from those acts." (Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 2005) §3:161, pg. 3-53; *citing Lundgren v. Sup Ct.*, 111 Cal.App.3d 477, 484 (1980). However, "[i]f the nonresident defendant operates entirely outside the forum state... the three-part test of limited jurisdiction must be met." (Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 2005) §3:168; *citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985).)

1 forum state, then he is subject to specific personal jurisdiction in the forum state. *Burger King*
 2 *Corp. v. Rudzewicz*, 471 U.S. 462, 480 (1985). This is true even if the defendant “never even
 3 visited [the forum state].” *Id.* at 479.

4 California’s long-arm statute provides that a court “may exercise jurisdiction on any
 5 basis not inconsistent with the Constitution of this state or of the United States.” California Code
 6 of Civil Procedure § 410.10. “In cases under these [long-arm] statutes in state and federal courts,
 7 jurisdiction on the basis of a *single* tort has been uniformly upheld.” *Rosenblatt*, 86 S.Ct. at 3
 8 (emphasis added). Ibrahim’s claims against Bondanella arise exclusively from his contact with
 9 the forum state, and the effect of his conduct within the forum state. Bondanella ordered
 10 Ibrahim’s arrest and prevented her from boarding her aircraft. (Complaint, ¶41.) As a
 11 foreseeable result of Bondanella’s order, Ibrahim was in fact arrested and she did in fact miss her
 12 flight. (Complaint, ¶¶40- 47.) The aircraft’s departure and Ibrahim’s arrest both occurred in the
 13 district over which this Court presides, San Francisco, California. *Id.*

14 When the wrongful conduct consists of a telephonic communication *into* the forum state
 15 from *outside* of the forum state, the conduct is considered within the forum state for
 16 jurisdictional purposes. *Vishay Intertechnology, Inc. v. Delta International Corp.*, 696 F.2d 1062,
 17 1065- 1066 (4th. Cir. 1982); *Murphy v. Erwin-Wasey, Inc.*, 460 F.2d 661, 664 (1st. Cir. 1972).⁹
 18 For example, “[w]here a defendant knowingly sends into a state a false statement, intending that
 19 it should there be relied upon to the injury of a resident of that state, he has, for jurisdictional
 20 purposes, acted within that state.” *Murphy*, 460 F.2d at 664. In *Vishay, supra*, the vice-president
 21 of a nonresident corporation misrepresented his identity in a phone call placed into the forum
 22 state from outside the forum state. *Vishay Intertechnology, Inc.*, 696 F.2d 1064. Based in part
 23 upon this phone call, the non-resident corporation was subject to personal jurisdiction in the
 24 forum state for, *inter alia*, unfair and deceptive business practices. *Id.* at 1065-1066.

25 Bondanella’s instructions, sent into this state were false. Bondanella instruction the
 26 detention of Ibrahim. None of the defendants have shown that any part of the Security

27 ⁹ “The *Murphy* court “permitted personal jurisdiction over an out-of state defendant whose only contacts with [the
 28 forum state] were a few phone calls and letters to the plaintiff.” *Vishay Intertechnology, Inc.*, 696 F.2d at 1066.
citing Murphy, 460 F.2d at 664.

Directives authorize the arrest of an individual by their mere placement on the “No-Fly List.” According to the federal defendants, a person found on the “No-Fly List” is simply “prohibited from flying.” (Salvator Decl., ¶7.) Thus, Bondanella’s wrongful conduct (e.g., ordering Ibrahim’s arrest) occurred within California for personal jurisdiction purposes because the conduct consisted of a telephonic communication into California. Therefore, Bondanella is subject to this Court’s jurisdiction with respect to Ibrahim’s claims.

B. Even If Bondanella’s Wrongful Conduct Were Deemed Outside Of California, Bondanella Would Still Be Subject To This Court’s Jurisdiction Because The Specific Jurisdiction Elements Are Satisfied.

Bondanella is subject to specific personal jurisdiction before this Court with respect to Ibrahim’s claims against him. A defendant will be subject to a forum state’s specific jurisdiction when the following elements are satisfied: (1) the defendant has done some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim arises out of the defendant’s forum-related activities; and (3) the exercise of jurisdiction is reasonable. *Gray & Co. v. Firstenberg Machinery Co., Inc.*, 913 F.2d 758, 760 (9th Cir. 1990).

As discussed below, each element has been met. Bondanella has purposefully availed himself of the privilege of conducting activities in California because his wrongful conduct was directed toward California. Ibrahim’s claims against Bondanella arise out of his contacts with California because they satisfy the “but for” causation test. Finally, the exercise of jurisdiction over Bondanella would be reasonable because the seven reasonableness factors weigh in favor of personal jurisdiction. Therefore, Bondanella is subject to this Court’s jurisdiction.

1. Bondanella Has Purposefully Availed Himself Of The Privilege Of Conducting Activities In California Because He Has Taken Deliberate Actions Toward California, And Caused Harm In California.

Bondanella has “purposefully availed” himself of the privilege of conducting activities in California. The purposeful availment requirement is satisfied if the defendant “has taken deliberate action” toward the forum state. *Panavision Int’l, L.P. v. Toeppen, Inc.*, 141 F.3d 1316, 1320 (9th Cir. 1998), *citing Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). “It is not

1 required that a defendant be physically present or have physical contacts with the forum, so long
2 as his efforts are “purposefully directed” toward forum residents.” *Id.*

3 When the wrongful conduct consists of an interstate telephonic communication, the “out-
4 of-state sender... has thereby ‘purposefully avail[ed] itself of the privilege of conducting
5 activities within the forum state, thus invoking the benefits and protections of its laws.’” *Murphy*,
6 460 F.2d at 664, citing *Hanson v. Deckla*, 357 U.S. 235, 253 (1958). Because Bondanella’s
7 wrongful conduct consists of an interstate telephonic communication, Bondanella satisfies the
8 purposeful availment requirement.

9 Moreover, the purposeful availment element is satisfied under the “effects doctrine”
10 because Bondanella’s conduct had its effect in the forum state. *Ziegler v. Indian River County*,
11 64 F.3d 470, 473 (9th Cir. 1995). Bondanella meets each of the three “effects doctrine”
12 elements: 1) intentional actions; 2) expressly aimed at the forum state; and 3) causing harm in the
13 forum state. *See, e.g., Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1486 (9th Cir.
14 1993); Bondanella’s Motion to Dismiss, pg. 9:11-16.

15 Bondanella’s direction to arrest Ibrahim and prevent her from boarding an aircraft were
16 clearly “intentional actions” as contemplated in the “effects doctrine.” “Intentional” refers only
17 to an “intent to perform an actual, physical act in the real world, rather than an intent to
18 accomplish a result or consequence of that act.” *Schwarzenegger v. Fred Martin Motor Co.*, 374
19 F.3d 797, 806 (9th Cir. 2004). Thus, Bondanella’s order was an “intentional act” regardless of
20 whether he intended that it actually be implemented.

21 The second element is also satisfied. Bondanella ordered an officer *in California* to
22 prohibit Ibrahim from boarding an aircraft located *in California*. Complaint, ¶¶ 2, 41. Bondanella
23 further ordered that Ibrahim be arrested *in California*. *Id.* Therefore, Bondanella’s conduct was
24 expressly aimed at the forum state because the relevant events and people were in California.

25 Finally, the “brunt of the harm” (i.e., Ibrahim’s arrest and exclusion from her flight)
26 occurred in California. However, “the ‘brunt’ of the harm need not be suffered in the forum
27 state” so long as the plaintiff has suffered *sufficient* harm in the forum state. *Yahoo! Inc. v. La*
28

1 *Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006).¹⁰ Thus, even
 2 if Ibrahim has suffered harm outside of California, the fact that she has suffered sufficient harm
 3 in California satisfies the “harm” prong of the “effects doctrine.” Consequently, the three
 4 “effects doctrine” elements are satisfied, and therefore Bondanella has purposefully availed
 5 himself of the privilege of conducting activities within the forum state.

6 Bondanella attempts to escape the purposeful availment requirement by arguing that his
 7 contact with California was “tortuitous” and based upon the actions of a third party police
 8 officer. (Bondanella’s Motion to Dismiss, pg. 10:2-4.) However, Ibrahim’s arrest was a
 9 collective effort between Bondanella and the police officers. Bondanella directed Ibrahim’s
 10 detention and the police officer carried out the arrest. Bondanella may not shirk this Court’s
 11 jurisdiction by hiding behind those responsible for implementing his improper and unauthorized
 12 order.

13 2. Ibrahim’s Claims Arise From Bondanella’s Contact With The Forum
 14 Because The “But For” Test Is Satisfied.

15 Bondanella satisfies the “arising out of” requirement because Ibrahim’s claims against
 16 Bondanella arise exclusively from Bondanella’s contact with California. If the injury
 17 complained of would not have occurred “but for” the defendant’s contact with the forum state,
 18 then the “arising out of” requirement is satisfied. *Gray & Co.* 913 F.2d. at 761.¹¹ This element is
 19 easily satisfied here. Ibrahim would not have been arrested *but for* Bondanella ordering that she
 20 be arrested. (Complaint, ¶¶ 41-43.) Ibrahim would not have missed her flight *but for* Bondanella
 21 ordering that she be prevented from boarding the aircraft. *Id.*

22 Bondanella’s alleged transient history of California contacts is not at issue. (*See, e.g.,*
 23 Bondanella’s Motion to Dismiss, pg. 10:25- 11:2.) “A single forum state contact can support
 24 jurisdiction if ‘the cause of action... arise[s] out of that particular purposeful contact of the
 25 defendant with the forum state.’” *Yahoo!* 433 F.3d at 1210, *citing Lake v. Lake*, 817 F.2d 1416,

26 ¹⁰ Bondanella improperly cites *Yahoo!* to suggest that Ibrahim may lack “jurisdictionally sufficient” harm in
 27 California because she is not a U.S. citizen. (Bondanella’s Motion to Dismiss, pg. 9, fn. 6.) The jurisdictional harm
 28 inquiry speaks only to *where* the harm was suffered— not whether the plaintiff is a U.S. citizen or whether the
 plaintiff *currently* resides in the forum state. *Yahoo! Inc., supra*, 433 F.3d at 1207.

¹¹ Bondanella incorrectly suggests that the “arising out of” element may not be satisfied even if the “but for” test is
 satisfied. (Bondanella’s Motion to Dismiss, pg. 11, fn. 7.) Yet as *Gray* reveals, the contact is sufficiently
 “meaningful” if it satisfies the “but for” test.

1421 (9th Cir.1987). Bondanella is subject to *specific* personal jurisdiction with respect to Ibrahim's claims before this Court because he directed an officer to arrest Ibrahim in California— not because he may have lived in California more than ten years before Ibrahim's arrest. (See, e.g., Bondanella's Motion to Dismiss, pg. 10:25-27.)

Finally, Bondanella's "No-Fly List" argument is without merit. Ibrahim was arrested not because her name may have been on a security screening list, but because Bondanella ordered her arrest. An airline passenger will not be arrested simply because his name appears on the "No-Fly List." See, e.g., *Green v. Transportation Security Administration*, 351 F.Supp.2d 1119, 1123 (W.D. Wash. 2005) (airline passengers named on the "No-Fly List" were neither arrested nor did they miss their flights). Consequently, the second prong of the specific jurisdiction test (i.e., the "arising out of" requirement) is satisfied.

3. Subjecting Bondanella To This Court's Jurisdiction Is Reasonable Because The Seven Reasonableness Factors Weigh In Favor Of Jurisdiction.

Subjecting Bondanella to this Court's jurisdiction is reasonable. The reasonableness requirement involves a seven-factor test: 1) the extent of purposeful interjection; 2) the burden on the defendant to defend the suit in the chosen forum; 3) the extent of conflict with the sovereignty of the defendant's state; 4) the forum state's interest in the dispute; 5) the most efficient forum for judicial resolution of the dispute; 6) the importance of the chosen forum to the plaintiff's interest in convenient and effective relief; and 7) the existence of an alternative forum. *Gray & Co.* 913 F.2d. at 761.

"No one factor is dispositive; a court must balance all seven." *Panavision*, 141 F.3d at 1323, citing *Core-Vent Corp. v. Nobel Indus.*, 11 F.3d 1482, 1485 (9th Cir. 1993). On balance, the seven factors favor subjecting Bondanella to this Court's jurisdiction.

a. *Defendant's Interjection*

It is reasonable to subject Bondanella to this Court's jurisdiction based upon his interjection into the forum state, California. The purposeful interjection factor strongly favors a finding of personal jurisdiction when the interjection is related to the plaintiff's claims.

Panavision, supra, 141 F.3d at 1323. In fact, Ibrahim's claims against Bondanella arise

1 exclusively from his interjection into California. Bondanella ordered an officer to arrest Ibrahim
 2 in California. Therefore, Bondanella may reasonably anticipate being haled into California for
 3 causes of action based upon the arrest. Moreover, because Bondanella knew that any injury
 4 resulting from his order would be felt within California, this factor favors subjecting Bondanella
 5 to this Court's jurisdiction. *See Panavision, supra*, 141 F.3d at 1323 (purposeful interjection
 6 favors jurisdiction where defendant knew his contacts would cause injury in forum state).

7
 8 *b. Burden on Defendant*

9 Any burden on Bondanella will not excuse Bondanella from appearing before this Court.
 10 Unless the defendant's "inconvenience is so great as to constitute a deprivation of due process, it
 11 will not overcome clear justifications for the exercise of jurisdiction." *Caruth v. International*
 12 *Psychoanalytical Ass'n*, 59 F.3d 126, 128-129 (9th Cir. 1995). Moreover, "'in this era of fax
 13 machines and discount air travel' requiring [an individual defendant] to litigate in California is
 14 not constitutionally unreasonable." *Panavision*, 141 F.3d at 1323, *quoting Sher v. Johnson*, 911
 15 F.2d 1357, 1365 (9th Cir. 1990).

16
 17 *c. Conflict with Sovereignty*

18 The sovereignty factor favors subjecting Bondanella to jurisdiction before this Court
 19 because there is no conflict between Virginia (where Bondanella resides) and California (the
 20 forum state). The sovereignty factor favors jurisdiction in the forum state when the plaintiff's
 21 federal and state causes of action require the same analysis. *Panavision*, 141 F.3d at 1323.
 22 Ibrahim's federal and state claims against Bondanella involve the same analysis because they
 23 arise from the same incident. Thus, this factor favors a finding of personal jurisdiction because
 24 there is no conflict between Virginia and California.

25
 26 *d. Interest of the Forum State*

27 The "interest of the forum state" factor favors subjecting Bondanella to jurisdiction
 28 before this Court. At the time of her arrest, Ibrahim was a resident of California. Complaint, ¶
 38. "California maintains a strong interest in providing an effective means of redress for its
 residents tortiously injured." *Gordy v. Daily News, L.P.*, 95 F.3d 829, 836 (9th Cir. 1996).
 Bondanella attempts to evade this Court's jurisdiction by pointing out that Ibrahim is currently

1 domiciled in Malaysia. (Bondanella's Motion to Dismiss, pg. 14:13-15.) Ultimately, however,
 2 Bondanella is subject to jurisdiction before this Court regardless of whether or not Ibrahim
 3 resides in California. It is sufficient that she was injured in California. "An individual injured in
 4 California need not go to [Virginia] to seek redress from persons who, though remaining in
 5 [Virginia], knowingly cause the injury in California." *Calder v. Jones*, 465 U.S. 783, 790 (1984).

6
 7 *e. Efficient Resolution*

8 The "efficient resolution" factor favors subjecting Bondanella to jurisdiction before this
 9 Court. "This factor focuses on the location of the evidence and witnesses." *Panavision*, 141
 10 F.3d at 1323. Bondanella admits that "some of the witnesses and evidence will be located in
 11 California." (Bondanella's Motion to Dismiss, pg. 14:21.) In fact, the majority of the witnesses
 12 and evidence are located in California. For example, the San Francisco Defendants, the United
 13 Defendants, and the appropriate representatives for the Federal Defendants are located in
 14 California. The relevant locations (i.e., the airport, the SFPD, and Stanford University) are all
 15 located within California. Therefore, California would provide efficient resolution for Ibrahim's
 16 claims against Bondanella.

17 *f. Importance of the Forum to the Plaintiff*

18 It is undoubtedly important to Ibrahim that her claims be adjudicated in California. *See*,
 19 e.g., *Roth v. Garcia Marquez*, 942 F.2d 617, 724 (9th Cir. 1991) ("no doctorate in astrophysics is
 20 required to deduce that trying a case where one lives is almost always a plaintiff's preference").
 21 Ibrahim's American home is in California, as she had been living in California with a student
 22 Visa valid from September 26, 2001 to January 11, 2007 and has a continuous working
 23 relationship with Stanford University. (Complaint, ¶ 38.) Moreover, Ibrahim's counsel are in
 24 California and the majority of the events which lead to this action occurred in California.

25 *g. Existence of an Alternative Forum*

26 There is no "alternative forum" to adjudicate Ibrahim's claims. Bondanella incorrectly
 27 suggests that Virginia would offer "a full and effective forum for relief." (Bondanella's Motion
 28 to Dismiss, pg. 15:25-26.) Virginia is not an appropriate alternative because Virginia would not

1 have personal jurisdiction (or be the proper venue) over the other defendants. Bondanella, and
 2 the other nonresident defendants, are subject to personal jurisdiction in California because their
 3 contacts with California resulted in injuries suffered in California (i.e., Ibrahim's arrest and
 4 exclusion from her flight). It appears that no Defendant, other than Bondanella, has had any
 5 contact with Virginia.¹²

6 **C. Even If Bondanella Had Identified Legitimate Jurisdictional Problems, The**
 7 **Court Should Allow Ibrahim To Conduct Discovery As To The**
 8 **Jurisdictional Facts Instead Of Dismissing Bondanella.**

9 Bondanella should not be dismissed for lack of personal jurisdiction— even if he had
 10 identified legitimate jurisdictional problems. The Court only has before it, Bondanella's single
 11 declaration in support of the issue of personal jurisdiction over Bondanella. Ibrahim has had no
 12 opportunity to evaluate those facts, question Bondanella on any of these facts, or seek to
 13 determine whether those facts are complete. Thus, Ibrahim should be entitled to conduct
 14 discovery as to the jurisdictional facts. "While a dispositive motion is pending, the court should
 15 allow discovery which addresses jurisdictional issues." *Orchid Biosciences, Inc. v. St. Louis*
 16 *Univ.*, 198 FRD 670, 672 (SD CA 2001), *citing America West Airlines, Inc. v. GPA Group, Ltd.*,
 17 877 F.2d 793, 801 (9th Cir.1989). Discovery would reveal the extent to which Bondanella is
 18 subject to specific and/or general jurisdiction before this Court.

19 In his declaration, Bondanella alleges a transient history of California contacts. (See
 20 Bondanella Decl.) Bondanella indicates that, between June 2004 and May 2005, he had received
 21 "occasional" telephone calls from law enforcement or airline personnel in California. *Id.* at ¶ 11.
 22 However, he does not indicate exactly how many telephone calls he had received from
 23 California, or the percentage of his calls from California versus calls from other states.
 24 Bondanella acknowledges that he worked for the TSOC at the time of the incident. As stated
 25 above, the TSOC provides "guidance" to local officials on how to handle "security related"
 26 matters. As part of his work with the TSOC, Ibrahim should be entitled to conduct discovery as

27 ¹² Moreover, it would be impossible for Ibrahim to maintain separate actions against Bondanella in Virginia and the
 28 other Defendants in California. *See* FRCP 19(a)2(i) (absent parties must be joined if they are so situated that any
 judgment rendered in their absence "may as a practical matter impair or impede [their] ability to protect that
 interest)."

1 to how often he worked with airport officials in California. Bondanella also indicates that he
 2 made "occasional" return trips to California between 1992 and 2004, but again fails to provide
 3 any specific information. *Id.* at ¶ 10. Moreover, Bondanella's declaration includes no
 4 information relating to his January 2, 2005 order that Ibrahim be excluded from her flight and
 5 arrested. Ibrahim should be allowed to resolve these issues through discovery.

6 Therefore, even if Bondanella had called into question this Court's jurisdiction over him,
 7 Ibrahim would be entitled to propound discovery, and dismissal would be improper.

8 **VI. Ibrahim Has Properly Stated Claims For Relief Against All Defendants Under 42**
 9 **U.S.C. section 1983 And Under Her State Law Claims.**

10 The federal defendants, Bondanella and the United defendants, all seek to dismiss
 11 Ibrahim's state law and 42 U.S.C. section 1983 claims under rule 12(b)(6) of the Federal Rules of
 12 Civil Procedure. In fact, on a motion to dismiss for failure to state a claim upon which relief
 13 may be granted "[t]he test is whether the facts, as alleged, support *any* valid claim entitling
 14 Plaintiff to relief...not necessarily the one intended by Plaintiff. Thus, a complaint should not be
 15 dismissed because plaintiff erroneously relies on the wrong legal theory if the facts alleged
 16 support any valid theory." (Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro.
 17 Before Trial (The Rutter Group 2006), Sec. 9:227; citing *Haddock v. Board of Dental Examiners*
 18 *of Calif.* (9th Cir. 1985) 777 F.2d 462, 464; *Minger v. Green* (6th Cir. 2001) 239 F.3d 793, 799-
 19 801; *United States v. White* (CD CA 1995) 893 F.Supp. 1423, 1428.) (Emphasis added.)

20 Moreover, such motions are "viewed with disfavor and (are) rarely granted." *Gilligan v.*
 21 *Jamzo Develop. Corp.* (9th Cir. 1997) 108 F.3d 246, 249. Dismissal of an action upon a 12(b)(6)
 22 motion should only be granted in "extraordinary" cases. *United States v. Redwood City* (9th Cir.
 23 1981) 640 F.2d 963, 966; *Cauchi v. Brown* (ED CA 1999) 51 F.Supp.2d 1014, 1016. "Instead of
 24 lavishing attention on the complaint until the plaintiff gets it just right, a district court should
 25 keep the case moving -- if the claim is unclear, by requiring a more definite statement under Rule
 26 12(e), and if the claim is clear, but implausible, by inviting a motion for summary judgment."
 27 *Bennett v. Schmidt* (7th Cir. 1998) 153 F.3d 516, 518. "A complaint should not be dismissed for
 28 failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts

1 in support of his claim which would entitle him to relief." *Conley v. Gibson* (1957) 355 US 41,
 2 45-46. Dismissal under rule 12(b)(6) is "especially disfavored in cases where the complaint sets
 3 forth a novel legal theory that can best be assessed after factual development." *Baker v. Cuomo*
 4 (2nd Cir. 1995) 58 F.3d 814, 818-819.

5 Moreover, in ruling on a motion to dismiss under 12(b)(6), the Court cannot consider
 6 material outside the complaint. *Arpin v. Santa Clara Valley Transp. Agency* (9th Cir. 2001) 261
 7 F.3d 912, 925. Also, the Court must accept as true all material allegations in the complaint, and
 8 any reasonable inferences that may be drawn from them. *Pareto v. F.D.I.C.* (9th Cir. 1998) 139
 9 F.3d 696, 699. When a complaint's allegations are capable of more than one inference, the court
 10 must adopt whichever inference supports a valid claim. *Columbia Natural Resources, Inc. v.*
 11 *Tatum* (6th Cir. 1995) 58 F.3d 1101, 1109.

12 **A. Ibrahim Has Properly Stated A Claim Under 42 USC §1983 Against The**
 13 **Federal Defendants, John Bondanella and The United Defendants.**

14 1. Ibrahim Has Constitutional Claims Against Bondanella and the Federal
 15 Defendants Under 42 USC §1983 and *Bivens v. Six Unknown Federal*
Narcotics Agents.

16 In support of their motions to dismiss pursuant to Rule 12(b)(6), Bondanella and the
 17 federal defendants argue that Ibrahim cannot assert §1983 claims against them because: a)
 18 Bondanella did "nothing" to deprive Ibrahim of her constitutional rights; and b) Bondanella and
 19 the federal defendants were acting under federal law, not under color of state law, and federal
 20 agencies and agents are not subject to § 1983. (Bondanella's Motion to Dismiss, pgs. 17:18-
 21 18:9; and Federal Defendants' Motion To Dismiss, pgs. 12:1-13:11.) These arguments,
 22 however, are pure conclusions, which are not supported by the law or by any of Ibrahim's
 23 allegations.

24 First, Bondanella cites to his declaration in support of this argument, however, his
 25 declaration may not be considered for purposes of his Rule 12(b)(6) motion. In ruling on a
 26 12(b)(6) motion, the Court cannot consider material outside the complaint. *Arpin v. Santa Clara*
 27 *Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). Further, the Court must accept all
 28 material allegations in the complaint, and any reasonable inferences that may be drawn from

1 them. *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Moreover, whether or not a party
 2 was acting under color of state law is a question of fact, and therefore not proper for a motion to
 3 dismiss. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 937, 939 (1982).

4 Moreover, Bondanella and the federal defendants' conduct did cause Ibrahim a
 5 deprivation of her constitutional rights. Liability under §1983¹³ attaches to anyone who
 6 "subjects or causes to be subjected" any person to a deprivation of rights; therefore an individual
 7 can be liable for "'setting in motion a series of acts by others which the actor knows or
 8 reasonably should know would cause others to inflict the constitutional injury.'" *Merritt v.*
 9 *Mackey*, 827 F.2d 1368, 1371 (9th Cir. 1987) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743-44
 10 (9th Cir. 1978)). As stated above, the TSOC, an agency within the TSA, is the entity to provide
 11 "guidance" to local officials on how to deal with "security related" issues. Bondanella, acting as
 12 an agent of the TSOC, instructed local police officers to arrest Ibrahim and contact the FBI.
 13 Ibrahim was arrested by local police officers and called the FBI to inform them of the arrest.
 14 Moreover, a TSA officer was also notified, who later arrived at the scene. Ibrahim was not
 15 finally released, until the FBI authorized that release.

16 Bondanella and the federal governments' bare assertions that any action they took was
 17 pursuant to federal law is insufficient to establish that they did not act under color of state law, or
 18 that they acted under color of federal law. The No Fly List does not provide authority for any of
 19 the defendants for that matter to arrest Ibrahim. The Security Directives, as acknowledged by
 20 the federal defendants, only provide that a person on the No Fly List cannot be allowed to fly.
 21 Ibrahim's arrest, caused, in part, by Bondanella, and which was participated in by the federal
 22 defendants, was therefore, outside the scope of any purported federal authority. Rather,
 23 Bondanella, as well as the federal defendants, used local peace officers, whose power is granted
 24 to them by the California Penal Code, (Calif. Penal Code §§834 and 836), to arrest Ibrahim,
 25 without any federal authority under the "No-Fly List" and without probable cause.

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 27
 28 ¹³ Because a § 1983 claim and a *Bivens* claim require the same analysis, the *Merritt* court did not
 differentiate between them. *Merritt v. Mackey*, 827 F.2d 1368, 1371 n.2 (9th Cir. 1987).

1 Federal agents may be liable under § 1983 if the agent participated in a conspiracy or
 2 acted in concert with state officials under color of state law to deprive the plaintiff of
 3 constitutional rights. *Behre v. Thomas*, 665 F. Supp. 89, 93 (D.N.H. 1987). For this reason, the
 4 cases cited by Bondanella do not support dismissal of the claims against him or the federal
 5 defendants. *See generally Stonecipher v. Bray*, 653 F.2d 398 (9th Cir. 1981); *American Science*
 6 *& Eng'g, Inc. v. Califano*, 571 F.2d 58 (1st Cir. 1978); *Behre v. Thomas*, 665 F. Supp. 89
 7 (D.N.H. 1987). The general rule that only state actors can be liable under § 1983 does not
 8 require dismissal here, because the Complaint alleges facts showing that Bondanella and the
 9 federal defendants acted jointly under color of state law with San Francisco police officers to
 10 deprive Ibrahim of constitutional rights. (Complaint, ¶¶ 41-46.) Therefore, Ibrahim's
 11 allegations are sufficient to state a § 1983 claim against Bondanella.

12 Moreover, even if Bondanella or the federal defendants could establish that they acted
 13 under color of federal rather than state law, it would not warrant dismissal of the constitutional
 14 claims against them. Federal agents may be personally liable for constitutional violations under
 15 *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), and its progeny. On a
 16 motion to dismiss under Rule 12(b)(6), dismissal is improper if the complaint "states a claim
 17 under any legal theory, even if the plaintiff erroneously relies on a different legal theory."
 18 *Haddock v. Board of Dental Examiners of Cal.*, 777 F.2d 462, 464 (9th Cir. 1985). A *Bivens*
 19 claim lies against individual federal agents and officials who violate the plaintiff's constitutional
 20 rights, under the color of law of the United States. *See generally Bivens*, 403 U.S. 388.

21 To the extent that this Court accepts Bondanella's or the federal defendants' claims that
 22 they acted under the direction of the federal government, the Court may simply construe the
 23 claims against Bondanella as *Bivens* claims. *See, e.g., North Carolina ex rel. Haywood v.*
 24 *Barrington*, 256 F. Supp. 2d 452, 460-61 (M.D.N.C. 2003) (construing § 1983 claims
 25 challenging federal forfeiture as *Bivens* claims); *Bordeaux v. Lynch*, 958 F. Supp. 77, 84 & n.6
 26 (N.D.N.Y. 1997) (treating § 1983 claims for violation of the Fourth Amendment as properly
 27 pleaded under *Bivens*). Federal courts have recognized a *Bivens* action for damages for
 28 violations of the First Amendment (*Gibson v. United States*, 781 F.2d 1334, 1341-42 (9th Cir.

1 1986)), the Fourth Amendment (*Bivens*, 403 U.S. at 397), and the Due Process Clause of the
 2 Fifth Amendment, including its equal protection component (*Davis v. Passman*, 442 U.S. 228,
 3 243-49 (1979)).

4 Here, Ibrahim has alleged that defendants violated her rights under the First, Fourth,
 5 Fifth, and Fourteenth Amendments to the United States Constitution. (Complaint, ¶¶ 50.)
 6 Ibrahim has further alleged that Bondanella received a telephone call from San Francisco Police
 7 Officer Richard Pate, and instructed Pate not to allow Ibrahim on the flight, to contact the FBI,
 8 and to detain Ibrahim for questioning. (Complaint, ¶ 41.) The San Francisco police officers
 9 arrested Ibrahim, contacted the FBI and the TSA. (RFJN, Exh. A.) Ibrahim was not finally
 10 released until the FBI “authorized” local police officers to release her. (Complaint, ¶46.) The
 11 complaint alleges that these acts were committed under color of state law and in violation of
 12 Ibrahim’s constitutional right to due process, equal protection, freedom against unreasonable
 13 search and seizure, freedom of religion, and freedom of association. (Complaint, ¶¶ 49-90.)
 14 Thus, Ibrahim’s allegations also support a *Bivens* action against the federal defendants and
 15 Bondanella.

16 Moreover, regardless of whether Ibrahim has a §1983 claim against the federal
 17 defendants, Ibrahim can pursue prospective relief for constitutional violations against the federal
 18 defendants. This Court has jurisdiction over Ibrahim’s constitutional claims for injunctive and
 19 declaratory relief under 28 U.S.C. section 1331, because they arise out of the United States
 20 Constitution. *See also Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 404
 21 (1971) (Harlan, J. concurring) (noting the “presumed availability of federal equitable relief
 22 against threatened invasions of constitutional interests”).

23 Under the Administrative Procedure Act (“APA”), the federal defendants’ sovereign
 24 immunity has been waived for Ibrahim’s nonmonetary claims. 5 U.S.C. § 702; *see also*
 25 *Presbyterian Church v. United States*, 870 F.2d 518, 523-24 (9th Cir. 1989) (holding that
 26 sovereign immunity was waived for nonmonetary claims arising out of the United States
 27
 28

Constitution). Because this court has the power to review Ibrahim's nonmonetary claims,¹⁴ it also would have supplemental jurisdiction over any state claims Ibrahim can allege against the Federal Defendants. *See* 28 U.S.C. § 1367(a).

2. Ibrahim Has Constitutional Claims Against the United Defendants Under 42 USC §1983 and *Bivens v. Six Unknown Federal Narcotics Agents*.

The United Defendants assert that Ibrahim has failed to "allege what qualifies United as a state actor for purposes of her suit."¹⁵ (The United Defendants' Motion To Dismiss pg. 11, fn.7.) For a private party to be liable under §1983, his or her conduct must be "fairly attributable" to the state. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 937 (1982). To meet this test, the deprivation must ultimately be caused by "the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible." *Ibid.* In addition, the party charged with the deprivation must be someone "who may fairly be said to be a state actor," because he or she (1) is a state official; (2) "has acted together with or obtained significant aide from state officials"; or (3) has acted in a way "otherwise chargeable to the State." *Ibid.* The extent of state involvement in the action is a **question of fact.** *Id.* at 939.

¹⁴ Because plaintiff seeks prospective relief, the Federal Defendants' argument that federal officials acting pursuant to federal law are immune from suit does not defeat plaintiff's claims. (Federal Defendants' Motion to Dismiss, 12:1-10 (*citing Cabrera v. Martin*, 973 F.2d 735, 743-44 (9th Cir. 1992).) *Cabrera* also acknowledges that federal officials sued in their official capacity are subject to injunctive relief under § 1983 if they conspire with state officials who, under color of state law, act to deprive a person of protected rights. *Cabrera*, 973 F.2d at 741. Thus, federal agents and officials are subject to prospective relief for constitutional violations, whether they commit those violations under color of state or federal law.

¹⁵ Moreover, the United defendants claim that they are immune from liability under Civil Code section 47 and under *Brown v. Department of Corrections* 132 Cal.App.4th 520 (2005). Contrary to the United's defendants' assertion, they are not simply a third party who was calling the police to report a crime. By notifying governmental agencies of passengers on a governmental list, United is inherently participating in the process of enforcing the No-Fly list. An entity must comply with the Constitution if the government has authorized, encouraged, or facilitated the unconstitutional conduct. *Blum v. Yaretsky*, 457 U.S. 991 1004 (1982); Erwin Chemerinsky, *Rethinking State Action*, 80 NW.U.L.Rev. 503, 511-16 (1985). Therefore, United is liable for violating plaintiff's constitutional rights, since the government has assisted in United's ability to implement the No-Fly list. Here, United plays a vital role in the implementation of the No-Fly list and works with the relevant governmental entities that maintain, construct and implement the list, which deprived plaintiff of her constitutional rights. Therefore United worked closely with the related entities in implementing the No-Fly list and was an integral part of the process in violating plaintiff's rights. Because United is entangled with the governmental entities that maintain the No-Fly list, United plays as much of a role in upholding, continuing and protecting the No-Fly list than any other governmental entity. As a result, United is not immune from liability of plaintiff's claims.

“Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.” *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722 (1961). A private entity may be characterized as a state actor if it is “pervasively entwined” with state officials. *Brentwood Academy v. Tennessee Secondary School Athletic Ass’n*, 531 U.S. 288 (2001). Here, the Complaint alleges that David Nevins, an employee of United Air Lines, asked to see Ibrahim’s ticket, called the San Francisco police and requested that they send officers to the airport. (Complaint, ¶¶ 24-25, 41.) Upon arriving at the airport, the police officers communicated with defendant Bondanella and arrested Ibrahim without probable cause, in violation of her Fourth Amendment rights. (Complaint, ¶¶ 41, 43, 70-76.) This deprivation resulted from the exercise of state authority, namely, the power of the San Francisco police officers to arrest individuals. The Complaint supports a claim that the United Defendants were state actors, because it alleges that Nevins worked with the San Francisco police officers to effect Ibrahim’s arrest, resulting in the deprivation of her constitutional rights. (Complaint, ¶ 41.) Because the extent of state involvement is a question of fact, *Lugar*, 457 U.S. at 939, the Court should not dismiss the claims against the United Defendants before the parties have had the opportunity to conduct discovery.

B. Ibrahim Has Properly Stated Claims Under Civil Code Sections 52.1 Against The United Defendants And Bondanella.

The United defendants and Bondanella assert that Ibrahim has failed to state a claim for violation of sections 52.1 and 52.3 of the California Civil Code. Ibrahim’s claims, however, are proper.

1. Ibrahim Has Properly Stated A Claim Against United and Bondanella Under Civil Code § 52.1

Section 52.1(a) provides “if a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by an individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state...may institute and prosecute in his or her own name...a civil action...”

1 In *Jones v. Kmart Corp.*, 17 Cal.4th 329 (1998), the Court recognized that section 52.1
 2 provides a cause of action based on attempted or completed interferences with rights secured by
 3 law, when a private actor interferes with them, even if the wrongdoer could not violate them
 4 directly. *Id.* at 334. *Jones* sets forth an example of a burglary victim, who suspects that his
 5 stolen property was hidden in a neighboring house. The victim goes to the house with the police
 6 and threatens to injure the homeowner if she does not change her mind and consent to an official
 7 and warrantless search of her home. *Jones* holds that in this situation, the homeowner may,
 8 under section 52.1, be able to sue her neighbor for interfering with her Fourth Amendment rights,
 9 assuming for purposes of this example that the Fourth Amendment protected the homeowner
 10 against warrantless searches by the state without her consent. The Court provides another
 11 example where a private actor's coercive interference with the right to vote may be actionable
 12 under section 52.1, since the right to vote is protected by the U.S. Constitution.

13 Similar to the examples set forth above, both the United defendants and Bondanella
 14 interfered with Ibrahim's exercise of her constitutional rights by acting collaboratively with each
 15 other and with the federal defendants and the San Francisco defendants to threaten, intimidate
 16 and coerce Ibrahim. United implemented a discriminative "No-Fly List" by calling the San
 17 Francisco police. San Francisco Police Sergeant Pate then called the TSOC and spoke to
 18 Bondanella, who authorized the arrest of Ibrahim, by telling Sgt. Pate to deny Ibrahim from
 19 flying, to contact the F.B.I. and to detain her for further questioning. The sequential and
 20 collaborative actions of United with other entities prevented Ibrahim from boarding her flight
 21 and led to her eventual arrest without any cause, thereby violating her rights under the First,
 22 Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

23 2. Ibrahim Has Properly Stated A Claim Against The United Defendants and
 24 Bondanella Under Civil Code § 52.3.

25 Civil Code § 52.3(a) provides that "no governmental authority, or agent of a
 26 governmental authority, or person acting on behalf of a governmental authority, shall engage in a
 27 pattern or practice of conduct by law enforcement officers that deprives any person of rights,
 28 privileges, or immunities secured or protected by the Constitution...or the laws of California."

1 The United defendants and Bondanella contend that section 52.3 do not apply because
 2 they are not “law enforcement officers.” This assertion, however, is not supported by the law.
 3 In *Ley v. State*, for example, 114 Cal.App.4th 1297, 1306 (2004), the Court considered whether
 4 the conduct of the state, county and public mental health officials deprived plaintiff of his civil
 5 rights. There, the court did not say that the state and county were not liable under section 52.3,
 6 because they were not “law enforcement officers.” Likewise, section 52.3 does not exclude the
 7 United defendants and Bondanella, just because they are not law enforcement officers. Section
 8 52.3 applies, because both United and Bondanella acted on behalf of the government by
 9 implementing, authorizing and working collaboratively with other entities to enforce the “No-Fly
 10 List.” By being part of the scheme of entities that deprived Ibrahim of her rights, United and
 11 Bondanella are liable to Ibrahim under section 52.3.

12 **C. Ibrahim Has Properly Stated A Claim For False Imprisonment Against The**
 13 **United Defendants And Bondanella.**

14 “‘The elements of a tortious claim of false imprisonment are: (1) the nonconsensual,
 15 intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable
 16 period of time, however brief.’” *Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept.*
 17 387 F.Supp.2d 1084, 1102 (N.D. Cal. 2005), *citing Easton v. Sutter Coast Hosp.*, 80 Cal.App.4th
 18 485, 496 (2000).

19 Bondanella and the United defendants satisfy all three elements for Ibrahim’s false
 20 imprisonment claim. Bondanella and Nevins, acting on behalf of the United defendants, worked
 21 collaboratively with the TSOC, the San Francisco defendants, the FBI, and the TSA, to arrest
 22 and imprison Ibrahim. Each of these entities, along with Bondanella, had a hand in leading,
 23 coordinating and guiding security activities at the airlines. (RFJN, Exh. I, pgs. 7-8.) Therefore
 24 Bondanella and the United Defendants played an active role in the imprisonment of Ibrahim and
 25 may be liable for Ibrahim’s false imprisonment claim.

26 First, Nevins contacted the San Francisco police, who then contacted Bondanella, who
 27 then told them to detain Ibrahim for further questioning. The arrest, not authorized by the “No-
 28 Fly List,” was made without any probable cause to believe that Ibrahim had committed a crime.

1 The final element for false imprisonment is plaintiff must be held for an appreciable period of
 2 time, no matter how brief. Ibrahim was in fact imprisoned at the San Francisco Airport police
 3 station for hours. Defendants are therefore liable for false imprisonment.¹⁶

4 **D. Ibrahim Has Properly Stated A Claim For Intentional And Negligent**
 5 **Infliction Of Emotional Distress Against The United Defendants And**
 6 **Bondanella.**

7 The California Supreme Court has described the elements for the tort of Intentional
 8 Infliction of Emotional Distress (“IIED”), as follows: (1) extreme and outrageous conduct by the
 9 defendant with the intention of causing, or reckless disregard of the probability of causing,
 10 emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3)
 11 actual and proximate causation of the emotional distress by the defendant's outrageous conduct.
 12 (*Fletcher v. Western National Life Ins. Co.*, 10 Cal.App.3d 376, 394 (1970); *Alcorn v. Anbro*
 13 *Engineering, Inc.*, 2 Cal.3d 493, 497-499 (1970); and *State Rubbish etc. Assn. v. Siliznoff*, 38
 14 Cal.2d 330, 336-339 (1952). Moreover, severe emotional distress “may consist of any highly
 15 unpleasant mental reactions such as fright, grief, shame, humiliation, embarrassment, anger,
 16 chagrin, disappointment or worry.” *Fletcher v. Western Nat. Life Ins. Co.*, 10 Cal.App.3d 376,
 17 397 (1970). “In many cases the extreme and outrageous character of the defendant’s conduct is
 18 in itself evidence that the distress has existed.” Res.2d, Torts §46, Comment j.

19 In this case, the United defendants and Bondanella jointly participated in the humiliation,
 20 embarrassment, and degradation of Ibrahim, by causing her to be arrested in public view, before
 21 her friend and her fourteen year old daughter, while she was suffering from abdominal pain,
 22 without any probable cause and having done nothing wrong. Ibrahim alleges that she suffered
 23 emotional distress as a result of this outrageous conduct. (Complaint, ¶113.)

24 ¹⁶ Like the United defendants, Bondanella cites to Civil Code § 47(b) to claim immunity from liability for false
 25 imprisonment. However, since § 47(b) does not apply to Bondanella. Section 47(b) establishes a privilege when a
 26 communication concerning a possible wrongdoing is reported to an official governmental agency. *Brown v. Dept. of*
 27 *Corrections*, 132 Cal.App.4th 520, 526 (2005) citing *Cabesuela v. Browning-Ferris Industries of California, Inc.*, 68
 28 Cal.App.4th 101, 112; *Hagberg v. California Federal Bank*, 32 Cal.4th 350, 360-61 (2004). Here, Bondanella was
 not a mere reporter of “potentially unlawful conduct to law enforcement.” (Bondanella’s Motion To Dismiss, p. 19).
 Instead, Bondanella represented one of the agencies receiving the report and actually authorized the imprisonment of
 plaintiff by instructing Sgt. Pate to detain plaintiff.

Moreover, Ibrahim has a claim for NIED. “[N]egligently causing emotional distress is not an independent tort but the tort of *negligence*. The traditional elements of duty, breach of duty, causation, and damages apply.” *Macy’s Calif. v. Superior Court* 41 Cal.App.4th 744, 748 (1995) *citing Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* 48 Cal.3d 583, 588 (1989). The United defendants, as aircraft carriers which Ibrahim was using for her flight, and Bondanella as an agent of a public government agency, had a duty to refrain from causing Ibrahim to be arrested without probable cause, which duty was breached when the United defendants contacted the police and Bondanella directed the arrest. Ibrahim was damaged as she missed her flight, suffered severe abdominal pain, was denied her medication, was detained for several hours and was publicly humiliated by being hand-cuffed in the middle of SFO.

VII. Ibrahim Has Properly Stated Claims For Declaratory And Injunctive Relief Against The United Defendants And Bondanella.

Declaratory or injunctive relief is proper to sustain a cause of action against another person when that person has committed or threatened to commit some wrongful conduct. *City & County of San Francisco v. Market St. Ry. Co.*, 95 Cal.App.2d 648, 655 (1950) (injunctive relief); *Travers v. Loudon*, 254 Cal.App.2d 926, 929 (1967) (declaratory relief). Defendant Bondanella contends that Ibrahim does not have a basis for declaratory or injunctive relief, because he has not committed or threatened to commit some wrongful conduct. On the contrary, declaratory and injunctive relief is proper for Bondanella because Bondanella authorized the detention of Ibrahim to the San Francisco Police Department (“SFPD”), thus depriving Ibrahim of her constitutional rights and causing Ibrahim to suffer physical and emotional harm. More specifically, Bondanella told Sergeant Pate, of the SFPD, to deny Ibrahim from flying, to contact the F.B.I. and to detain her for further questioning. (See Notice Of Motion And Memorandum Of Points And Authorities In Support Of Plaintiff’s Motion To Amend Complaint To Add New Parties, filed May 31, 2006, pg. 3). Furthermore, Bondanella is employed by the U.S. Investigations Services, Inc. (“USIS”), for the Transportation Security Operations Center (“TSOC”), which gives guidance on handling “security related” issues. (See Notice Of Motion And Memorandum Of Points And Authorities In Support Of Plaintiff’s Motion To Amend

1 Complaint To Add New Parties, filed May 31, 2006, pg. 3). Therefore Bondanella had the
 2 authority and means to guide the SFPD on how to deal with this alleged “security related” issue,
 3 which deprived Ibrahim of her constitutional rights. Bondanella’s wrongful conduct
 4 consequently entitles Ibrahim to declaratory and injunctive relief.

5 United contends that an injunction is not the proper remedy, since United has never
 6 undertaken or threatened to undertake an act in the first place. Conversely, United plays the
 7 most crucial role in the implementation of the “No-Fly List” and therefore is entangled with the
 8 scheme of entities that create the “No-Fly List” and deprived Ibrahim of her constitutional rights.
 9 Because United plays an active and collaborative role with the entities designated to maintain,
 10 manage and disseminate the “No-Fly List,” United has performed an act that may properly be
 11 remedied through injunctive relief. Given the aforementioned reasons, declaratory and
 12 injunctive relief is proper.

13 CONCLUSION

14 For the reasons set forth herein, Ibrahim requests that this Court deny the motions of the
 15 United Defendants, John Bondanella and the Federal Defendants to dismiss this action pursuant
 16 to Federal Rules of Civil Procedure, rule 12(b)(1)(2)&(6).

17
 18 Dated: June 8, 2006

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